

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

USGEN NEW ENGLAND, INC.)
Plaintiff,)
v.) No. 04-12225 (RCL)
MICHAEL O. LEAVITT,)
in his capacity as Administrator)
of the U.S. Environmental Protection)
Agency, et al.)
Defendants.)

)

**UNOPPOSED MOTION TO SUBSTITUTE DOMINION ENERGY
BRAYTON POINT, LLC FOR USGEN NEW ENGLAND, INC. AS PLAINTIFF**

Pursuant to Fed. R. Civ. P. 25(c), USGen New England, Inc. (“USGenNE”) hereby moves the Court to substitute for Dominion Energy Brayton Point, LLC (“Dominion Brayton”) as plaintiff in this action.

As grounds for this motion, USGenNE states:

1. Dominion Brayton is a Virginia limited liability company with a principal place of business at 1 Brayton Point Road, Somerset, MA 02726-1607.
2. Effective January 1, 2005, ownership of and title to the Brayton Point Station were transferred from USGenNE to Dominion Brayton.
3. Also effective January 1, 2005, with the consent of the U.S. Environmental Protection Agency and Massachusetts Department of Environmental Protection, USGenNE was removed from, and Dominion Brayton was added to, the National Pollutant Discharge Elimination System (“NPDES”) permit (the “Permit”) for Brayton Point Station, MA0003654,

which is currently pending review before the Environmental Appeals Board (“EAB”). *See* Exhibits A and B.

4. On October 22, 2004, USGenNE filed a complaint (the “Complaint”) in the above-captioned matter requesting an order requiring the Administrator of the Environmental Protection Agency (the “Administrator”) to provide an evidentiary hearing to determine the terms of the Permit.

5. As the new owner of Brayton Point Station and a current holder of the Permit, Dominion Brayton has the same interest that USGenNE had at the time it filed the Complaint.

6. Dominion Brayton is now a proper plaintiff in the above-captioned action.

7. Dominion Brayton is not seeking any change in schedule or delay of any type as a result of its substitution for USGenNE.

8. USGenNE and Dominion Brayton both assent to the proposed substitution.

9. The Defendants have indicated that they will not oppose the relief requested in this Motion.

WHEREFORE, USGenNE prays that this Court substitute Dominion Brayton for USGenNE as plaintiff in this action

By its attorneys,

/s/ John M. Stevens
Wendy B. Jacobs (No. 46273)
John M. Stevens (No. 30912)
Randall E. Kromm (No. 85630)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000
jstevens@foleyhoag.com

Date: January 12, 2005

Counsel for USGen New England, Inc. and
Dominion Energy Brayton Point, LLC

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

I, John M. Stevens, hereby certify that on January 10 and January 11, 2005, counsel for the Plaintiff conferred with counsel for the Defendants. Defendants do not oppose the substitution of Dominion Energy Brayton Point, LLC as plaintiff in this action.

/s/ John M. Stevens
John M. Stevens

Certificate of Service

I hereby certify that a true copy of the Unopposed Motion to Substitute Dominion Energy Brayton Point, LLC for USGen New England, Inc. as Plaintiff was served by mailing first class and postage prepaid to the following counsel of record: Heather E. Gange, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026-3986. A courtesy copy was provided by electronic mail to: heather.gange@usdoj.gov.

/s/ John M. Stevens
John M. Stevens

EXHIBIT A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

December 16, 2004

OFFICE OF THE
REGIONAL ADMINISTRATOR

Mr. Ernest K. Hauser
President
USGen New England, Inc.
7600 Wisconsin Avenue
Bethesda, MD 20814-6161

Ms. Pamela F. Faggert
Vice President & Chief Environmental Officer
Dominion Energy New England, Inc.
5000 Dominion Boulevard
Glen Allen, VA 23060

**Re: NPDES Permit Transfer Requests for Brayton Point Station (NPDES No. MA0003654)
and Salem Harbor Station (NPDES No. MA0005096)**

Dear Mr. Hauser and Ms. Faggert:

The New England Office of the U.S. Environmental Protection Agency (EPA) has received and reviewed Mr. Hauser's letter of November 29, 2004, concerning the requested transfer of the National Pollutant Discharge Elimination System (NPDES) permits for Brayton Point Station in Somerset, MA (NPDES No. MA0003654), and Salem Harbor Station in Salem, MA (NPDES No. MA0005096). The transfer of permits is requested because USGen New England, Inc. (USGen), is selling these power plants to Dominion Energy New England, Inc. (DENE).

EPA regulations promulgated at 40 C.F.R. § 122.61 indicate that NPDES permits may be transferred from a current permittee to a permitted facility's new owner or operator either by permit modification or, under certain circumstances, by automatic transfer. As indicated by the September 3, 2004, Fossil Asset Purchase and Sale Agreement referenced in USGen's letter, USGen has agreed to sell Brayton Point Station and Salem Harbor Station to DENE. USGen's letter indicates that the sale is expected to close on or about January 1, 2005. As a result, USGen asks that its NPDES permits for Brayton Point Station and Salem Harbor Station be automatically transferred to DENE's affiliates Dominion Energy Brayton Point, LLC (Dominion Brayton), and Dominion Energy Salem Harbor, LLC (Dominion Salem), respectively, as of the date of closing of the sale of the two power plants.

As stated above, USGen's letter indicates that the purchase and sale of the two facilities from USGen to DENE will be consummated on or about January 1, 2005. EPA received USGen's

Help us serve you better. If you need to call us regarding this correspondence in the future, please reference R1-04-000-2180.

Internet Address (URL) • <http://www.epa.gov/region1>

Recycled/Recyclable • Printed with Vegetable Oil Based Ink on Recycled Paper (Minimum 30% Postconsumer)

letter requesting the permit transfers more than thirty days prior to January 1, 2005. Therefore, assuming a permit transfer on or after January 1, 2005, USGen's notice letter satisfies one of the conditions for automatic transfer: namely, that notice of the proposed permit transfer is received by EPA at least 30 days prior to the proposed transfer date. See 40 C.F.R. § 122.61(b)(1). In addition, USGen's letter also satisfies the second pertinent condition by appending agreements between USGen and Dominion Brayton and between USGen and Dominion Salem regarding the transfer of permit responsibility, liability and coverage for the NPDES permit for each facility. See 40 C.F.R. § 122.61(b)(2).

As a result, pursuant to 40 C.F.R. § 122.61, EPA agrees that the NPDES permit for Brayton Point Station can transfer automatically from USGen to DENE and Dominion Brayton, and that the NPDES permit (and the currently pending application for permit reissuance) for Salem Harbor Station can transfer to DENE and Dominion Salem. These automatic transfers will take place on either January 1, 2005, or on the closing date of the purchase and sale of the power plants from USGen to DENE (or its corporate affiliates), whichever comes later.

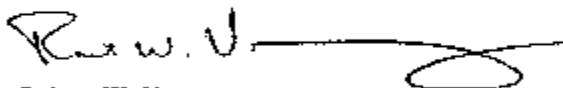
Regarding the need to transfer or amend air permits, EPA has checked its files and has no federal air quality permits for any of these facilities (Brayton Point Station, Salem Harbor Station and Manchester Street Station). However, each facility does need to amend its state-issued Title V permit to reflect the change in ownership. This can be done as an administrative amendment and does not need federal approval. You should work with the Massachusetts DEP and Rhode Island DEM to obtain these amendments to the Title V permits.

EPA requests immediate notification of the closing of the sale from both USGen and DENE. Such notification should be provided to David Webster by email ([to webster.david@epa.gov](mailto:webster.david@epa.gov)) and/or facsimile # (617) 918-1505. While the NPDES automatic transfer will take effect as described above, EPA will confirm the transfer of the NPDES permits by making the appropriate changes to the permits and mailing copies of the revised permits to both of you.

In the meantime, if you have any questions or concerns regarding this letter, please contact David Webster, Manager, NPDES Industrial Permits, at (617) 918-1791. Alternatively, you may have your attorneys contact Mark Stein of our Office of Regional Counsel at (617) 918-1077.

Thank you for your cooperation.

Sincerely,



Robert W. Varney
Regional Administrator

cc: Glenn Haas, MA DEP
David Johnston, MA DEP
Angelo Liberti, RI DEM
Barry A. Ketschke, Plant Manager, Brayton Point Station
Michael A. Fitzgerald, General Manager, Salem Harbor Station
Steven DeGabriele, Director of Business Compliance Division, MA DEP
Stephen Majkut, Director of Air Resources, RI DEM
David Webster, CMA, EPA
Mark Stein, ORC, EPA

EXHIBIT B



COMMONWEALTH OF MASSACHUSETTS
 EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 ONE WINTER STREET, BOSTON, MA 02108 617-292-6500

MITT ROMNEY
 Governor

ELLEN ROY HERZFIELDER
 Secretary

KERRY HEALEY
 Lieutenant Governor

ROBERT W. COLLEGGE, Jr.
 Commissioner

December 29, 2004

Ernest K. Hauser
 President
 USGen New England, Inc.
 7600 Wisconsin Avenue
 Bethesda, MD 20814-6161

**Re: Transfer of Environmental Permits and Applications
for Salem Harbor Station and Brayton Point Station**

Dear Mr. Hauser:

The Department of Environmental Protection is in receipt of the following two letters from you: (1) a letter dated November 19, 2004, concerning the transfer of Department permits for Salem Harbor Station from USGen New England, Inc. ("USGenNE") to Dominion Energy Salem Harbor, LLC ("Dominion Salem"); (2) a letter dated November 19, 2004, concerning the transfer of Department permits for Brayton Point Station from USGenNE to Dominion Energy Brayton Point, LLC ("Dominion Brayton"). Each letter has attached to it an Attachment A that lists active and pending DEP permits, plan approvals, licenses, authorizations, orders, memoranda of agreement and applications for the facility in question.¹ Each letter also has attached to it a number of transfer agreements for particular permits.

The Department is of the opinion that, for both the Salem Harbor Station and Brayton Point Station facilities, the respective Attachment A lists of permits, plan approvals, licenses, authorizations, orders, memoranda of agreement and applications (collectively referred to as "Permits and Applications") are complete and the procedure for transfer of same is accurate and complete.² With limited exception, all of the Permits and Applications will transfer automatically at the moment of property transfer. The Department understands that you have not

¹ A revised Attachment A for Brayton Point Station was submitted to the Department on December 28, 2004.

² By separate letters the Department has responded to transfer submittals made on behalf of USGenNE with regard to four Tier II 21E sites (3 at Salem Harbor Station, 1 at Brayton Point Station). Responsibility for these sites will transfer from USGenNE to Dominion Salem and Dominion Brayton respectively at the moment of property transfer or after 45 days from the date of the transfer submittal, whichever is sooner.

included on the lists of Permits and Applications those which are not allowed to be transferred. These exclusions include recycling permits and hazardous waste generator identification numbers. As to these, USGenNE will submit notices to terminate and Dominion Salem and Dominion Brayton have already filed and/or will file their own applications. Also to be addressed in separate submittals are the transfers of NO_x allowances and emission reduction credits, as well as the designation of the new account representatives and alternates as required.

I understand that USGenNE will give notice of the transfer of these Permits and Applications to Dominion Salem and Dominion Brayton. I also look forward to receiving notice of the date of the property transfers for Salem Harbor Station and Brayton Point Station.

Very truly yours,



Edward P. Kunce
Deputy Commissioner

cc: Gary Moran, Regional Director, Southeast Regional Office, DEP
Wendy B. Jacobs, Esq.
Ralph A. Child, Esq.